

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JULIE SCHMIDT and LEON GERHARD,  
  
Plaintiffs,  
  
v.  
  
TACOMA POLICE DEPARTMENT, et al.,  
  
Defendants.

Case No. C09-5135RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Plaintiffs' Motion for Default Judgment [Dkt. #43]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

Plaintiffs seek a default judgment against defendant Terrance Galvan. The docket reflects that Galvan returned the waiver of service on October 2, 2009, but thereafter failed to file an answer or other responsive pleading as required by Fed. R. Civ. P. 12. The Clerk entered a default pursuant to Fed. R. Civ. P. 55(a) on December 2, 2009.

Plaintiffs' "complaint" alleges that Galvan wrongfully evicted them from their home and, in so doing, presumably violated several of plaintiffs' federal rights and various state laws. Plaintiffs seek damages of \$100,000.00 against Galvan. It is unclear from the motion whether they also seek equitable relief.

1 The decision to enter a default judgment is within the discretion of the Court. *Eitel v. McCool*,  
2 782 F.2d 1470, 1471 (9<sup>th</sup> Cir. 1986). Here, because the merits of plaintiffs' claims are not at all clear and  
3 because of "the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the  
4 merits," *Id.* at 1471-1472, the Court declines to enter a default judgment. After this record has been more  
5 developed through motions practice involving the other defendants, the Court will be in a better position  
6 to determine the liability, if any, of defendant Galvan.

7 Plaintiffs' Motion for Default Judgment [Dkt. #43] is **DENIED**.

8 **IT IS SO ORDERED.**

9 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party  
10 appearing pro se.

11 Dated this 11<sup>th</sup> day of June, 2010.

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14 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE